

*William Innes of London, Merchant, - - Appellant.*

*Mess. Gibson and Balfour of Edinburgh, - Respondents.*

# The Appellant's C A S E.

THE Appellant carried on a Correspondence for some Years with *James Scott*, Merchant in *Edinburgh*, entirely for his (Mr. *Scott's*) Conveniency to raise Money for him, and without Commission; in the Course of which the said *James Scott*, about the Beginning of *December 1769*, became indebted to the Appellant for a Sum of 2000 l. Sterling and upwards.

12th *December 1769*, *James Scott* remitted to the Appellant a Bill of Mess. *Johnston* and *Smith* on *Glynn* and *Halifax*, for 800 l. at 40 Days, which when due, and when applied on Account of what *Scott* then owed him, would reduce it to 1200 l.

*James Scott* being in Use also at Times to draw Bills upon Mess. *Annand* and *Colquhoun*, Merchants in *London*, with whom the Appellant had no Connection or Concern, did, upon the same Day, draw Four Bills upon them for 800 l. Sterling, all at 60 Days Date, Two whereof, for 300 l. each, were payable to the Order of Mess. *Gibson* and *Balfour*, the Respondents.

On the same 12th of *December 1769*, *James Scott* wrote the following Letter from *Edinburgh* to the Appellant, accompanying the said Remittance of 800 l. by the Bill on *Glynn* and *Halifax*; "Dear Sir, By Disappointment of Remittances from *Ebenexer MacCulloch* and Company (Merchants in *Edinburgh*) I have some Reason to fear that Mess. *Annand* and *Colquhoun* may be obliged to stop Payment, unless Mr. *Annand*, now here, can obtain the Securities he is labouring to get, viz. Lord *Dumfries* and *George Young*.—I was so unlucky as this Day, before I heard of any Demur in their Affairs, to draw on Mess. *Annand* and *Colquhoun* for 800 l. in Four Bills, as under, viz.

" To Mess. <i>Gibson</i> and <i>Balfour</i> , at 60 Days,	-	-	-	L. 300	0	0
" To Order of the same, at 60 Days,	-	-	-	300	0	0
" To Order of <i>James Seton</i> , at 60 Days,	-	-	-	100	0	0
" To Order of <i>Andrew Sinclair</i> , Esq; at 60 Days,	-	-	-	100	0	0
				<hr/>		
				L. 800	0	0

" I send you inclosed Mess. *Johnston* and *Smith's* Bill, 40 Days, on *Glynn* and Company, for 800 l. If they accept my Bills, and are going on, I beg you will put them in Possession of this 800 l. Bill, if not, I have directed Mr. *Colquhoun* to send them to your good self, if the Holders will take that Trouble, and I beg you will accept them for my Honour. I have also desired they will send to you any other Bills of mine running on them to you for Payment, which I shall make Provision for, as I should not wish they returned here.—The Post burries me, so that I have only Time to add, that I am, &c."

14th *December 1769*, *James Scott* wrote again to the Appellant in the following Words: " I wrote you last Post, just as the Post was going, and I hope you'll excuse the Hurry I was in. My Letter inclosed you *Johnston* and *Smith's* Bill on *Glynn* and *Halifax* for 800 l. at 40 Days Date, which you will please (if Mess. *Annand* and *Colquhoun* are going on) deliver to them, and if not you will be so good as credit my Account for same, and accept for Honour



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“ Two Bills I drew same Date to Mess. Gibson and Balfour of 300 l. each, at 60 Days Date,  
 “ One Bill to Order of James Seton, at 60 Days Date, for 100 l. Sterling, and One Bill to  
 “ Order of Andrew Sinclair, Esquire, at 60 Days Date, for 100 l. in all 800 l. the Holders  
 “ whereof, Mess. Annand and Company, will inform you of, or Mess. Gibson and Balfour,  
 “ Mr. James Seton, and Mr. Andrew Sinclair, will direct their Correspondents to call on you  
 “ with them, as I have applied to them for that Purpose. *If this Stop happens, as I doubt not*  
 “ *it will, it is owing to Ebenezer MacCulloch and Company not remitting, for retiring Bills*  
 “ drawn on A. and C. to a large Amount, on account of their not being able to pass their Bills  
 “ here, by reason of the large Quantity of them in the Circle, and a great Stock of Linen  
 “ Goods on their Hands; *though it is thought here that by next Post they will get such a Supply,*  
 “ *by the Credit of their Friends, from the New Bank or Ayr Bank, and the other Banks, in Bills,*  
 “ *as might have prevented all the Mischief; and a House in Town would have assisted them till*  
 “ *they had reduced the Circulation to a small Matter, which they could have managed. This*  
 “ *Night I hear Mess. MacCulloch and Young's Friends are meeting again to try what can be*  
 “ *done to mend Things. As I have sundry Bills on Mess. Annand and Colquhoun now running*  
 “ *unaccepted, my Friends Mess. Gibson and Balfour propose to lend me their Assistance on this*  
 “ *Occasion, and say, if you will retire my Bills as they become due, and accept my Draughts to*  
 “ *their Order, and write me a Letter to that Purpose in Course of Post; and that you will do*  
 “ *so, they will assist and enable me to supply you with good Remittances to keep you fully remit-*  
 “ *ted, until I can get Matters easy, which will be by the Term of Whitsunday next in a pro-*  
 “ *gressive Way. In Hopes of hearing from you in Course, I am, &c. Please to negotiate the*  
 “ *inclosed Bill on John Wright of Bristol, and credit my Account for the Amount when in*  
 “ *Cash, being 57 l. 12 s. 3 d.*”

16th Decem-  
 ber 1769.  
 Letter from  
 the Appellant  
 to James  
 Scott.

To James Scott's said Letter of the 12th December, received at London the 16th, the Appel-  
 lant by that Night's Post wrote the following Answer: “ Mr. James Scott, I wrote you the  
 “ 11th, and have your Favour of the 12th Instant, and am sorry for what you write about  
 “ your Fears regarding Annand and Company, in case they do not get some Securities and  
 “ Assistance. I notice you had drawn on them to Gibson and Company, 60 Days Date, 600 l.  
 “ to James Seton 100 l. and to A. Sinclair 100 l. 200 l. which you desire I may accept for  
 “ your Honour, *which I shall do if necessary, and I have Johnston and Company's Bill on Glynn*  
 “ *and Company, due January 24th, 800 l. to your Credit. I see you desire I may give An-*  
 “ *nand and Company said Bill if they are going on, as to which I shall consider. I was out of*  
 “ *Town To-day, and have not seen them nor heard of them. I notice you also desire I may*  
 “ *pay other Draughts of yours on A. and C. and I shall enquire what there is of them. You*  
 “ *have a good deal to remit me soon, and I hope you will not delay, Money being useful dur-*  
 “ *ing the Winter. I am, &c.*”

18th Decem-  
 ber 1769.  
 Letter from  
 Appellant to  
 James Scott.

To James Scott's said Letter of the 14th of December, received by the Appellant at London  
 the 18th, he by that Night's Post returned the following Answer: “ Mr. James Scott, I wrote  
 “ you last Post, and have your Favour of the 14th Instant. *I find that Mess. Annand and*  
 “ *Company are stoppt, so I have placed the 800 l. on Glynn and Company to your Credit. Besides*  
 “ *which, you have to remit me about 300 l. more this Week, and shall expect it. I wonder you*  
 “ *have not sent me a List of the Bills on Annand and Company, which you desire I may pay for*  
 “ *your Honour; but I have got a List of those due up to 31st January, amount to 415 l. 13 s. 4 d.*  
 “ *besides what are due in February, which in the Hurry their Clerks could not give. The 800 l.*  
 “ *you drew on them last Post must be added to the List, being altogether a Sum I cannot undertake,*  
 “ *which I am extremely sorry for. I spoke to Mess. Hogg and Kinloch at Change, and asked*  
 “ *them to assist in the Payment of your Bills, but they told me they do not correspond with you,*  
 “ *which is News to me also; I thought they did. I notice that Mess. Gibson and Company would*  
 “ *assist you on my Indemnity, and I thank them, but the Scotch Circulation is come into such*  
 “ *Disgrace, that it would be too dangerous for me to go on with it, and it will be very trouble-*  
 “ *some to me if you do not remit me duly for the Bills running. I make them about 1200 l.*  
 “ *I have your Draught on Bright, Bristol, at 30 Days, 57 l. 12 s. 3 d. to your Credit. I wish*  
 “ *that Ebenezer MacCulloch and Company may be able to retrieve these alarming Affairs, but*  
 “ *little else than absolute Cash will do it here, as Scotch Bills are grown a deal too numerous.*  
 “ *I am, &c.*”

“ Your last made me expect Remittance for the Two Bills on Annand and Company, which  
 “ were due the 16th, and it looks odd you have not complied.”

Correspond-  
 ence between  
 the Respon-

From Excerpts of Letters produced by the Respondents in this Cause, it appears that they,  
 14th December 1769, wrote to Mess. Biggar and Hamilton, Correspondents of theirs at Lon-  
 don,



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ents and  
Messrs Biggar  
and Hamil-  
ton and Messrs  
Bogle and  
Scott.

don, in the following Words: " Yesterday *Ebenexer MacCulloch* and Company, of this Place,  
" stopt Payment; we have the Pleasure to advise you, that we have not the least Connection  
" with them. As the Consequences of this Failure may perhaps prevent *Annand* and *Colqu-*  
" *boun* from accepting our last Remittance to you, you will in that Case present it to *William*  
" *Innes*, who will accept it for Honour of the Drawer; if he does not, you'll send us a Protest  
" for Non-acceptance, and keep the Bill till further Orders."

It appears that the Respondents had transmitted Mr. Scott's other Bill for 300 l. on Messrs *Annand* and *Colquhoun* to another House in London, viz. that of Messrs *Bogle* and *Scott*; they, on the 14th of December 1769, having wrote to *Bogle* and *Scott* as follows: " Should a Re-  
" mittance in our last per 300 l. on *Annand* and *Colquhoun* be refused Acceptance, you will  
" present it to *William Innes* for Honour of the Drawer, and if he don't accept it, transmit us  
" a Protest thereon for Non-acceptance."

To the Respondents said Letter to *Biggar* and *Hamilton* of the 14th December, they on the 18th returned the following Answer: " We wrote you the 11th Instant, and have now be-  
" fore us your Favours of the 12th and 14th December. The First inclosed *James Scott* on  
" *Annand* and *Colquhoun*, 300 l. We hope to be able to acquaint you of the Fate of *Annand*  
" and *Colquhoun's* Bill this Evening, but we have already sent several Times to their House  
" without finding them."

" *Postscript.* We have sent repeatedly again to *Annand* and *Colquhoun*, but without get-  
" ting the Bill; however, we shall take Care to execute your Directions To-morrow."

And of the 19th December, *Biggar* and *Hamilton* again write to the Respondents:

" We sent as early as possible to *Annand* and *Colquhoun* this Morning, and had *J. Scott's*  
" Bill on them per 300 l. returned not accepted. It was immediately dispatched to Mr. *Innes*,  
" who refused to have any Thing to do with it; and we were at the same Time informed,  
" we believe from pretty good Authority, that *James Scott's* Draughts on that Gentleman, to  
" between 3000 l. and 4000 l. have been returned for Want of Acceptance. According to  
" your Directions we have returned you a Protest for Non-acceptance."

To the Respondents said Letter of 14th December to *Bogle* and *Scott*, they, 18th December 1769, returned for Answer to the Respondents, " That they would apply to the Appellant Mr.  
" *Innes* for Acceptance of *James Scott's* Bill on *Annand* and *Colquhoun*." And 19th December  
they again write to the Respondents; " We have at present to inclose you Protest for Non-ac-  
" ceptance of *James Scott's* Bill on *Annand* and *Colquhoun*. We applied to Mr. *William Innes*,  
" who does not chuse to accept it; from his Manner of speaking we think it improbable that  
" he will pay or accept any of these Bills."

3d Decem-  
ber 1769,  
Letter from  
Respondents  
to the Ap-  
pellant.

On the 23d of December 1769, the Respondents wrote the following Letter from *Edinburgh*  
to the Appellant: " Sir, Mr. *James Scott* of this Place having applied to us for some Assistance  
" in the present unsettled Situation of Scotch Bills in your Place, and as he means to remit the  
" Money to your House, to enable you to retire his sundry Engagements in London, we will with  
" the greatest Cheerfulness comply with his Request, on receiving a Letter from you, obliging  
" yourself to accept his Bills on you for as large a Sum as he shall remit you, or we shall do it on  
" his Account. This we are persuaded will be much to the Honour and Interest of Mr. *Scott's*  
" Friends in London, and as he is now contracting his Affairs, and calling in his Funds, he will  
" be very soon out of this Dilemma. Mr. *Scott* showed us your Letter of the 16th, agreeing to  
" accept Two Bills he had drawn on *Annand* and *Colquhoun* to our Order, at 60 Days Date  
" from the 12th, per 300 l. each, if necessary, for his Honour, which we have duly noted, and  
" are, &c."

" P. S. Messrs. *Annand* and *Colquhoun* have covered themselves greatly in their Concerns with  
" *MacCulloch* and Company by Arrestments."

On the 13th of December 1769, *MacCulloch* and Company had stopt Payment at *Edinburgh*,  
and it was well known at *Edinburgh* on the 16th or 17th that this Stop must have occasioned  
*Annand* and *Colquhoun* stopping Payment at London; and on the 18th of December, when the  
Appellant, under a strong Suspicion of their Failure, went to their Counting-house, and was  
there shown the Number and Extent of *James Scott's* Bills running upon them at that Time,  
to the Amount of 5000 l. he was convinced of the Failure and Bankruptcy of *Scott* being  
unavoidable,



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unavoidable, as a Consequence of the other Failures, and as he had not remitted him any Money by the Post which came in that Day for Payment of the Bills immediately due, as promised in his First Letter of the 12th; the Appellant from thenceforth determined not to accept nor pay any of *Scott's* Bills, as signified in his Letter to *Scott* of the said 18th December.

From the Looseness of Expression, and the Obscurity in Point of Meaning of *James Scott's* Two Letters, and also of the Respondents Letter to the Appellant above stated, it is plain that *James Scott* wanted nothing else but artfully to draw in the Appellant to plunge deep in his Bankruptcy, and that the Respondents meant to assist Mr. *Scott* in drawing in the Appellant; in which, if they had been successful, there can be no Doubt, under all Circumstances, that the Appellant would have been loaded with a Loss of several Thousand Pounds more. In Mr. *Scott's* Letter of the 12th of December, the very Day before *MacCulloch* and Company stopt Payment, he pretends *he was so unlucky, before he heard of any Demur in their Affairs*, to draw on *Annand* and *Colquhoun* for 800 l. and yet in the very same Letter he says he had Reason to fear the Disappointment of Remittances from *MacCulloch* and Company might occasion *Annand* and *Colquhoun* to stop Payment; and then come his Requests in regard to the 800 l. Bill remitted to the Appellant. Tho' at this Time he owed the Appellant 2000 l. *he begged him* to put the 800 l. Bill in Possession of *Annand* and *Colquhoun*, if they accepted his Bills, and were going on; if not, he had directed *Colquhoun* to send them to the Appellant, *and he begged the Appellant* would accept them for his Honour, and he also modestly desired *any other Bills of his* running on *Annand* and *Colquhoun* to be sent to the Appellant for Payment, which *he, Mr. Scott, should make Provision for*. These extraordinary Requests of Mr. *Scott*, in regard to his Bills on *Annand* and *Colquhoun*, and the 800 l. naturally gave the Appellant at the Time disagreeable Suspicions of a Delusion being intended; but as Mr. *Scott* mentioned that he would *make Provision* for his Bills, the Appellant did not choose to be precipitate in giving a direct Refusal, as he had a large Sum at Stake, and it was proper to give Mr. *Scott* Encouragement to remit him further,—and accordingly, in his Letter of the 16th December, wrote that he would accept the Bills, *if necessary*; but as to Mr. *Scott's* Request, of the Appellant's giving *Annand* and Company the said Bill of 800 l. *he would consider of it*, and would also inquire what other Draughts of his on *Annand* and Company there were to be paid.

Mr. *Scott* being apprehensive that his Letter of the 12th December, which he wrote in a Hurry, would be unavailable, writes again of the 14th; and though *MacCulloch* stopt Payment that Day, and his Failure was in *Edinburgh* notorious, yet Mr. *Scott*, though at Night, or in the Evening of the 14th, writes, “*If the Stop happens*, of which he doubted not, it was owing to *MacCulloch* and Company not remitting, on account of their large Quantity of Bills in the Circle, and a great Stock of Linen Goods on their Hands, though it was thought at *Edinburgh* that *by next Post they would get such a Supply*, by the Credit of their Friends, as might have prevented all the Mischief, and a House in Town would have assisted them till they had reduced the Circulation to a small Matter, which they could have managed; and *that Night he heard MacCulloch* and Friends were meeting again, to try what could be done to mend Things.” Thus the Appellant was, by *Scott's* inexplicit Manner of writing, and by the Duplicity and Obscurity of his Expressions, still amused and kept in the Dark, in Hopes that he might by next Post, or in a Post or Two, have been drawn in such a Length as would have been pernicious to him.—But Mr. *Scott*, not relying entirely on the Obscurity of his Letters, instead of remitting as promised, resorts to a further Ground for amusing and deluding the Appellant, to whom he writes, “*His Friends Messrs. Gibson and Balfour* proposed to lend him their Assistance, and if the Appellant would retire his Bills as they came due, and accept his Draughts to their Order, *and write them a Letter to that Purpose in Course of the Post*, and the Appellant would do so, they would assist and enable him to supply the Appellant with good Remittances, to *keep him fully remitted*, until he could get Matters easy, which would be by *Whitsunday in a progressive Way*”;—and then he incloses a Bill on *Bristol*, for the considerable Sum of 57 l. which by the way was refused, and turned out to be good for nothing. It is remarkable, that though in *Scott's* Letter of the 14th December he represents *Gibson* and *Balfour* as proposing to lend him their Assistance, if the Appellant would by writing undertake so and so, yet *Gibson* and *Balfour* did not write a Word to the Appellant on this Subject till the 23d December; by which Time they and Mr. *Scott* must have known, from the Appellant's Letter to *Scott* of the 18th, that the Appellant had retracted, and refused to accept or pay any of his Bills; and then, when the Appellant received *Gibson* and *Balfour's* Letter of the 23d December, it looked to him to have been intended for nothing but a civil or artful TAKE-IN.—According to their Letter, *Scott* applied to them for Assistance, instead of their proposing to assist him, and as he meant to remit the Money to the Appellant's House, to enable him to retire his sundry Engagements



*Engagements in London*, they would with the greatest Cheerfulness comply with his Request, on receiving a Letter from the Appellant, obliging himself to accept *Scott's* Bills on him, *for as large a Sum as he should remit the Appellant, or they should do on his Account.* The Appellant, under the Circumstances of the Case, when Bills of *Scott's* on *London* were then running to the Amount of 5000 l. and he was actually indebted to the Appellant for 2000 l. could not help considering *Gibson* and *Balfour's* Letter to him as no Security at all, but very well calculated for drawing in the Appellant to accept, or to bind himself to accept, *Scott's* Bills: And for what? Why truly, for as large a Sum as *Scott* should be pleased to remit, or they (*Gibson* and *Balfour*) should be pleased to remit on his Account; but without obliging One or other of them to remit, or undertaking that any of them would absolutely remit One Shilling, or had Ability to remit. The Appellant therefore considered it fortunate for him that he had, before the Receipt of this Letter of the 23d *December*, retracted, and refused to accept or pay any of *Scott's* Bills, and that, from all the Circumstances, having discovered a Design of drawing him in to be a Sufferer in *Scott's* Bankruptcy, he had made a Resolution to prefer his own Safety and Indemnification, so far as the 800 l. Remittance would go, by applying it to *Scott's* Credit, on account of what he owed him, and for which Sum the Appellant was Cash in Advance for him; which, after discovering the real Bankrupt Circumstances of *Scott*, as well as of *MacCulloch* and Company, and *Annam* and Company, the Appellant considered himself justly intitled to do, and his Duty to do, and not to submit to the Delusion he was at first drawn into, when in his Letter of the 16th *December* he wrote that he would accept, if necessary, but would consider whether he would give *Annam* and *Colquhoun* the 800 l. Bill.

Two Days after the 23d *December*, when the Respondents wrote their Letter to the Appellant, that is, on the 25th *December*, *James Scott* actually stopt Payment; and so industrious were the Respondents about securing themselves from losing by *Scott's* Bankruptcy, that as early as the 23d *December*, the very Day they wrote to the Appellant to engage to accept *Scott's* Bills, they sued out Process of Arrestment against *Scott*, for attaching all Debts due to him, and the same Day, and by that Night's Post, dispatched their Arrestments all over the Country, far and near, attaching *Scott's* Effects wherever they could be found; and thus, by means of their being the first Arresters, Two Days before the Bankruptcy was known to any but themselves, they covered and secured very considerable Sums due to the Bankrupt.

Hitherto it appears that the Respondents did not rely on the Expression in the Appellant's Letter of the 16th *December*, as a Security to them for the Two Bills of 600 l. which is evident from their Letter of the 23d, anxiously soliciting a Letter from the Appellant, addressed to themselves, engaging to accept and pay *Scott's* Bills, as the only Security they could rely on.

Afterwards, however, the Respondents apprehending that they might perchance make something by an Action against the Appellant, sued out Attachments upon his Effects in *Edinburgh*, and on the 27th of *December* preferred a Petition in their Name to the Sheriff of *Edinburgh*, praying that *James Scott* might be examined, and ordained to deliver up the Letter wrote to him by the Appellant on the 16th *December*, and that it might lie *in retentis*, for the Behoof of all concerned; and the Sheriff having accordingly ordered the said Letter to be exhibited, it was sealed up, to lie *in retentis*, subject to the further Order of Court. This Proceeding before the Sheriff was an Affection on the Respondents Part, as if *Scott* had shown himself unwilling to give up the Letter, and as if the Respondents had had a Right to compel him to give it up by Order of a Court; but it was plainly a Kind of collusive Proceeding; and being before an inferior Court, in which the Appellant, residing in *London*, neither was nor could be a Party, nor had Notice thereof, the Sheriff's ordering the Letter to be exhibited was prejudicating the Question, whether *Gibson* and *Balfour*, with whom the Appellant had no Connection or Concern, had a Right to found any Demand against the Appellant, upon a Letter wrote by him to *Scott*, a Third Party, when *Scott* himself could not, upon that Letter, maintain any Demand against the Appellant, to whom he was very considerably indebted, and utterly unable to pay him.

The Respondents having so far proceeded collusively before the Sheriff, brought an Action in the Court of Session against the Appellant, and nominally against *James Scott*, charging, that on the 12th of *December* 1769, the said *James Scott* had drawn Two Bills of Exchange for 300 l. each on *Annam* and *Colquhoun*, payable to the Pursuers (Respondents); that these Bills were on the 19th of said Month protested for Non-acceptance; that said *James Scott* having Reason to suspect the Dishonour of these Bills, had remitted to the Appellant 800 l. desiring him (in case the Bills were dishonoured) to honour and pay the same on the Drawer's Account; that



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that the Appellant, by his Letter of the 16th of *December*, acknowledged the said Remittance, and promised to pay the said Two Bills, if Acceptance and Payment was refused by *Annand* and *Colquhoun*; that *James Scott* refused to deliver up the said Letter to the Pursuers (Respondents); that they might operate their Relief thereon; and that the Appellant had refused to perform his Promise and Engagement to honour these Bills: And praying therefore for a Decree against the said *James Scott* and the Appellant, jointly and severally, not only to exhibit the said Letter, but to pay the Pursuers (Respondents) the Sum of 600 l. Sterling, as the Contents of the said Two Bills of Exchange and Interest thereof, with 100 l. more in Name of Damages, Exchange, Re-exchange, Costs, and Expences.

28th Decem-  
ber, 1769.  
Letter from  
the Respon-  
dents to the  
Appellant.

On the 28th of *December* the Respondents, by way of Apology for their Action, wrote the Appellant the following Letter: " We wrote you the 23d current, at Mr. *Scott's* Desire, and " were surprized that Evening to find you had not accepted for his Account those Two Bills " drawn by him on *Annand* and *Colquhoun* for 300 l. each, to our Order, which you had agreed " to do by your Letter of the 16th to Mr. *Scott*; and that Gentleman having now stop'd Pay- " ment, and as we rested our Security for the Payment of those Bills on your Letter agreeing to " accept them, we were obliged to raise a Summons against you, for accepting and paying these " Bills, and have laid an Arrestment in the Hands of Messrs. *Alison* and *Campbell* of this Place, " on the Dependence of the Process. We however took Care to inform them, that our Arrest- " ment was only on account of a Dispute subsisting between us, and to bring on the Determi- " nation of it before our Courts in Scotland. It was with extreme Regret that in these ticklish " Times we took this Step, but we could not avoid it, without being wanting to ourselves, and " we take the First Opportunity to inform you of it, that you may loose the Arrestment, by " giving Bail to stand Trial here."

Respondents  
Grounds  
urged in Sup-  
port of their  
Demand.

In endeavouring to support the Respondents Demand, they urged that the 800 l. Bill was transmitted to the Appellant under Trust, and for the special Purpose of his putting it into *Annand* and *Colquhoun's* Hands in case they did not stop Payment, in order to enable them to pay the Bills drawn to the Respondents Order; and in case *Annand* and *Colquhoun* stop'd, the Appellant to accept these Bills himself, and retain the Bill on *Glynn* for his Indemnification; that the Matter was therefore to be considered as a Deposition of the Bill on *Glynn* in the Appellant's Hands, subject to Mr. *Scott's* Orders, and upon the said Conditions; and the Appellant having, pursuant to Mr. *Scott's* Orders, accepted of the Deposition under the said Conditions, was bound to comply with the Terms, and was not intitled to hold the 800 l. on account of any Claim or Demand he had against *Scott*; and the Respondents further urged the Appellant's Letter of the 16th *December*, not only as Evidence of his having accepted the Terms of the Deposition, but as inferring a Promise of Payment against him.

Appellant's  
Plea.

The Appellant insisted, that Mr. *Scott's* Bills to the Respondents Order, drawn on *Annand* and *Colquhoun*, being of Date the 12th *December*, it was not on the Faith of *Scott's* Letter of that Date to the Appellant, nor could it possibly have been on the Faith of what the Appellant, in his Letter of the 16th, wrote to *Scott*, or was expected to have wrote to *Scott*, that the Respondents dealt with Mr. *Scott*; and for Evidence of this, the Appellant urged an Admission of the Respondents in the Course of the Proceedings, that they did not know of *Scott's* Letter to the Appellant earlier than the 13th *December*, when, as they alledged (though without any Evidence) Mr. *Scott* showed them the Copy of that Letter in his Copy-book of Letters; that the Appellant's Letter claimed on by the Respondents, being a Letter written in Confidence to Mr. *Scott* in the Course of Correspondence with him, and intended as a Favour to him only, and not to be delivered or communicated to any Third Party, and might have been destroyed or cancelled by Mr. *Scott*, or delivered back to the Appellant, could not be set up as containing any Obligation on the Appellant in favour of the Respondents, or any Third Party whomsoever; that it contained no explicit or effectual Obligation even in favour of Mr. *Scott*, who, at the Time of remitting the 800 l. Bill to the Appellant, being indebted to him in 2000 l. had no Right to order him to apply the Money to any other Use than on account of what he owed him, and for which *Scott* did not make any other Remittance; and though the Appellant, by means of Mr. *Scott's* delusive and begging Letter of the 12th of *December*, was drawn in to say that he would accept the Bills, if necessary, his own Safety was certainly understood and implied, and upon Condition that *Scott* remitted as promised in his First Letter of the 12th of *December*; and when, by the Bankruptcies of *MacCulloch* and Company, and of *Annand* and Company, connected with *Scott*, and also by the Bankruptcy of *Scott* himself, it appeared very plainly that the Appellant could have no Chance of recovering his Payment or Indemnification, he could not any longer remain bound, though he had given the most explicit Assurance to Mr. *Scott* to pay the Bills in question; but so far from any explicit Assurance, he

only



only said he would accept, if necessary; but as to giving the 800 l. Bill to *Annand* and *Colquhoun*, which was Part of *Scott's* Request, the Appellant, so far from being explicit, declared he would consider. There was no Foundation for comparing the present to the Case of a Trust or of a Deposition,—the Bill of 800 l. upon *Glynn*, transmitted to the Appellant, being justly to be considered as a Remittance made to the Appellant, *Scott* having put it in the Appellant's Power to apply it on account of what Mr. *Scott* owed him, though accompanied with a begging Request to apply it in a particular Shape;—and although he requested the 800 l. Bill to be delivered to *Annand* and Company, in case they were going on, it was in Reality a Remittance for the Payment of Bills immediately due drawn by *Scott* Two Months before, and not a Remittance for the Bills to the Respondents;—and supposing *Scott's* Request accompanying the Bill sufficient to constitute a Trust or Deposition, still it was competent to the Appellant, the supposed Depository, to retract his Acceptance of the Terms of Deposition upon the Change of Circumstances, when *Scott's* Bankruptcy appeared to be unavoidable, and the Appellant must be a considerable Loser. It would be contrary to Justice to set up or admit the Idea of a Trust or Deposition in this Case, modified in any other Manner.—The Appellant's Letter could not justly be considered in any other Light than as a Resolution on his Part, upon the Supposition of his being safe; which Resolution, upon an Alteration of Circumstances, and Mr. *Scott's* Insolvency ensuing, the Appellant was intitled to alter;—and there was no Foundation for the Respondents setting up or construing the Appellant's Letter as a Promise, or if construed a Promise, such Promise could not be binding, there being no valuable Consideration to support it, but on the contrary a palpable Loss, to defeat and destroy such supposed Promise.

10th August 1770. Interlocutor of the Lord Ordinary, appealed from.  
The Lord *Coaston*, Ordinary, 10th August 1770, pronounced the following Interlocutor:  
“The Lord Ordinary having considered the Memorials for both Parties, finds it proved, by *James Scott's* Letters of the 12th and 14th of December 1769, that the Bill for 800 l. Sterling on *Glynn* and Company was transmitted to the Defender, under Trust that he should deliver the same to *Annand* and *Colquhoun*, if they should accept his Bills on them payable to the Pursuers, and were still going on, and if not, that he should credit his Account with the said Bills, and for his Honour accept the said Bills drawn on *Annand* and *Colquhoun*, payable to the Pursuers: Finds it instructed by the Defender's Letter to *Scott*, dated the 16th December 1769, That he did accept and undertake the Trust in Terms above-mentioned, and did thereby become bound, in case it should be necessary, to accept the Bills due to the Pursuers: And therefore, and in respect it is proved by the said Letters of the 14th December, and the other Letters produced, that *Scott* had notified to the Pursuers the Orders he had given to the Defender, and that in case of Necessity they were to apply to him for Acceptance and Payment, finds, That in those Circumstances it was not competent to the Defender to counteract the Orders of his Constituent, nor to refile from the Obligation he had come under by his Letter of the 16th of December: And therefore repels the Defence, and decerns.”

1st December 1770. Interlocutor of the Lord Ordinary, appealed from.  
To this Interlocutor the Lord Ordinary adhered by an Interlocutor of the 21st December 1770.

14th February 1771. Interlocutor of the Lords of Session, appealed from.  
Against these Interlocutors of the Lord Ordinary the Appellant preferred a Reclaiming Petition to the whole Lords, which being answered, and Replies for the Appellant, and Duplies for the Respondents given in, the Lords, upon the 14th February 1771, pronounced the following Interlocutor: “The Lords having advised this Petition, with the Answers, Replies, and Duplies, they adhere to the Lord Ordinary's Interlocutors reclaimed against, and refuse the Desire of the Petition: And in respect that the Replies for the Defender *William Innes* contain many unjust and injurious Reflections against the Characters of the Pursuers, therefore find the Defender *William Innes* liable in Expences of Process, and decern, and appoint an Account thereof to be given in.”

14th February 1771. Interlocutor of the Lords of Session, appealed from.  
Afterwards an Account being given in by the Respondents, amounting to 39 l. Sterling and upwards, besides Agent-Fee, and the Dues of extracting the Decree, the Lords of Session, 23d February 1771, pronounced the following Interlocutor: “Having advised the said Account of Expences, they modify (tax) the same to 25 l. Sterling in full, including Agent-Fee, for which they decern against *William Innes* Defender, and also decern against him for the Expences of extracting the Decree, as the same shall be certified by the Collector of the Clerks Dues.” And this amounted to 21 l. 12 s. Sterling.

The Appellant has appealed from all the said several Interlocutors, and humbly hopes they will be reversed, for the following among other

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## R E A S O N S :

I. The Justice of the Case does not, with Submission, turn or depend upon the Circumstances mentioned in the Interlocutor of 10th *August* 1770. Though *James Scott*, at transmitting the 800 l. Bill to the Appellant, may have trusted that he the Appellant would comply with what he begged of him, and though the Appellant, by his Letter to *Scott* of the 16th of *December*, said that he would, if necessary, and *Scott* may *ex post facto* have given the Respondents Notice of what he wrote to the Appellant accompanying the 800 l. Bill, and that they were to apply to the Appellant for Acceptance and Payment, still it was competent to the Appellant at any Time before actual Acceptance to retract and refile. And it is erroneous in the Interlocutor to suppose that *Scott*, in writing to the Appellant, was giving him Orders such as a Constituent is intitled to give his Factor, which the Factor cannot counteract or refile from; it being plain from *Scott's* Letters that he did not consider himself intitled to give Orders, but only supplicated so and so: And under the Circumstances of the Case to suppose him intitled to give Orders to bind the Appellant about the Application of the Remittance is a plain Absurdity, when at that Instant of Time he was truly indebted to the Appellant in a Sum of 2000 l. Sterling, on account of which the Appellant had as good a Right to the 800 l. Remittance as *Anmand* and Company.

II. The Justice of the Case, it is submitted, turns upon the following Circumstances:—It is admitted, that the Respondents dealing with *Scott* for the Two Bills of 600 l. in question commenced before the Respondents knew of *Scott's* writing to the Appellant concerning those Bills; and that it was not on the Faith of what *Scott* wrote, or of any favourable Answer expected from the Appellant, that the Respondents took the Bills from *Scott*. It is evident from the Circumstances of the Case, that the Remittance of 800 l. was not made for the sole or special Purpose of paying the Bills in question, but for the Payment of other Bills instantly due, which had been drawn Two Months before, agreeable to the Practice of Merchants, who are driven to the Necessity of raising Money in that Way; and that Mr. *Scott* was not intitled to give any Orders or Directions to bind the Appellant to apply the 800 l. for the sole Purpose of paying the Respondents, to his the Appellant's Prejudice, nor was it *Scott's* Meaning that the 800 l. should be held for that sole Purpose; but *Scott*, by his Manner of remitting, writing, and requesting, intended a Bait for drawing in the Appellant to accept all *Scott's* Draughts running at the Time.—The Appellant's Expression in his Letter of the 16th *December*, that he would accept, *if necessary*, being in Answer to *Scott's* Letter, signifying and assuring that he would make Provision for all his Bills, was no more than a conditional Resolution, not to be departed from, in case Mr. *Scott* made Provision as he said; but when, by the Bankruptcy of *MacCulloch* and Company in *Edinburgh*, and of *Anmand* and Company in *London*, and by *Scott's* Failure in making Provision for his Bills, no Doubt remained with the Appellant about *Scott's* Bankruptcy, and that all he had wrote to the Appellant was mere Delusion, the Appellant was, on such Disappointment and Change of Circumstances, intitled to retract and refuse to accept or pay the Bills in question.—Though at the Time of writing his Letter his Resolution was to accept and pay, if *Anmand* and *Colquhoun* broke, but not if Mr. *Scott* broke, or failed to remit or make Provision for what he owed, that transient Resolution, which was plainly conditional, and any Obligation depending thereupon fell to the Ground upon the Appellant, by his Letter of the 18th of *December*, being *Monday*, the very next Post Day to that of the 16th, retracting and refusing to accept or pay; and he was intitled to retract, after finding *Anmand* and *Colquhoun* actually broke, and that *Scott* having made no Provision or Remittance for his Bills running on them at the Time to the large Amount of 4000 l. and upwards, his Bankruptcy was unavoidable.—These being the Grounds upon which the Justice of the Case turns, there is no Foundation for the Respondents Demand against the Appellant, grounded on the retracted Expression in his Letter, which was not written to them, nor meant or intended for their Benefit, but was meant as a Favour only to *Scott*, to whom no Demand could lie thereupon, and as little to the Respondents.

III. In-



III. Independent of the Merits on the principal Question, the Interlocutors decreeing Expences against the Appellant on the pretended Ground of his Replies containing *many unjust and injurious Reflections* against the Respondents Characters, are plainly erroneous and unjust. There is not a Colour of Foundation for saying that the Appellant's Replies, or any Part of his Pleadings, contain many or any unjust or injurious Reflections; the Appellant's ingenious Counsel, who drew and signed that Part of the Pleadings contained in the Replies, wrote that Paper with great Acuteness, as well as with great Fidelity to his absent Client residing in London; and though from a connected Chain of Circumstances he argues that both Scott and the Respondents used their Endeavours to draw in the Appellant to be a great Loser by Scott's Bankruptcy (and it was the Counsel's Duty so to argue and to maintain that they were unjustifiable in their Combination) yet the Argument is stated with great Decency of Expression, and the Appellant referring to the Paper itself in the Pleadings, to show that it contains no such Reflections, humbly submits that it is a very extraordinary Dispensation of Justice to punish the Party with Expences, to the Amount of 46 l. and upwards, on the Ground of unjust and injurious Expressions being used by his Counsel, supposing any such could be found.

AL. WEDDERBURN.  
J. DUNNIG.



William Innes, - - - Appellant.  
Gibson and Balfour, - - - Respondents.

### The Appellant's C A S E.

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To be Heard at the Bar of the House of Lords, on  
the Day of April 1772.